

PRESENTED: April 7, 2020

ADOPTED: April 7, 2020

ORDINANCE NO. 2020 – 04 . 01

AN EMERGENCY ORDINANCE TO EFFECTUATE TEMPORARY CHANGES IN CERTAIN DEADLINES AND TO MODIFY PUBLIC MEETING AND PUBLIC HEARING PRACTICES AND PROCEDURES TO ADDRESS CONTINUITY OF OPERATIONS ASSOCIATED WITH PANDEMIC DISASTER.

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, on March 12, 2020, Governor Ralph S. Northam issued Executive Order Fifty-One declaring a state of emergency for the Commonwealth of Virginia arising from the novel Coronavirus (COVID-19) pandemic; and

WHEREAS, Executive Order Fifty-One acknowledged the existence of a public health emergency which constitutes a disaster as defined by Virginia Code § 44-146.16 arising from the public health threat presented by a communicable disease anticipated to spread; and

WHEREAS, Executive Order Fifty-One ordered implementation of the Commonwealth of Virginia Emergency Operations Plan, activation of the Virginia Emergency Operations Center to provide assistance to local governments, and authorization for executive branch agencies to waive “any state requirement or regulation” as appropriate; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency, beginning March 1, 2020, in response to the spread of COVID-19; and

WHEREAS, on March 17, 2020, in accordance with Virginia Code § 44-146.21, the City of Danville Director of Emergency Management declared a local state of emergency in the City of Danville; and

WHEREAS, on March 27, 2020, in accordance with Virginia Code § 44-146.21, the City of Danville Director of Emergency Management amended his declaration of a local state of emergency in the City of Danville; and

WHEREAS, on April 7, 2020 the Council of the City of Danville, Virginia confirmed both the declaration and amended declaration of local emergency made by the local director of emergency management on March 17, 2020 and March 27, 2020 respectively; and

WHEREAS, the City Council finds that COVID-19 constitutes a real and substantial threat to public health and safety and constitutes a “disaster” as defined by Virginia Code §44-146.16 being a “communicable disease of public health threat,” and

WHEREAS, while the City Council values transparency in government and public engagement, it also finds that emergency measures are necessary to mitigate the spread of COVID-19 and to protect the health, safety, and welfare of residents and employees, while still providing for government operations to continue during this state of emergency; and

WHEREAS, Virginia Code § 15.2-1413 provides that, notwithstanding any contrary provision of law, a locality may, by ordinance, provide a method to assure continuity of government in the event of a disaster for a period not to exceed six months; and

WHEREAS, Virginia Code § 44-146.21(C) further provides that a local director of emergency management or any member of a governing body in his absence may upon the declaration of a local emergency “proceed without regard to time-

consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to performance of public work;" and

WHEREAS, Virginia Code § 15.2-1102 provides that the City shall have and may exercise all powers which it now has or which may hereafter be conferred upon or delegated to it under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of the affairs and functions of the municipal government, the exercise of which is not expressly prohibited by the Constitution and the general laws of the Commonwealth, and which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality and the safety, health, peace, good order, comfort, convenience, morals, trade, commerce and industry of the municipality and the inhabitants thereof, and the enumeration of specific powers shall not be construed or held to be exclusive or as a limitation upon any general grant of power, but shall be construed and held to be in addition to any general grant of power; and

WHEREAS, Virginia Code § 2.2-3708.2(A)(1)(a) allows, a member of a Public Entity who is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance to participate the meeting; and

WHEREAS, Virginia Code § 2.2-3708.2(A)(3) allows, under certain procedural requirements including public notice and access, that members of City Council may convene solely by electronic means "to address the emergency;" and

WHEREAS, the open public meeting requirements of the Virginia Freedom of Information Act ("FOIA") are limited only by a properly claimed exemption provided under that Act or "any other statute;" and

WHEREAS, the Governor and Health Commissioner of the Commonwealth of Virginia and the President of the United States have recommended suspension of public gatherings of more than ten attendees; and

WHEREAS, the Attorney General of Virginia issued an opinion dated March 20, 2020 stating that localities have the authority during disasters to adopt ordinances to ensure the continuity of government; and

WHEREAS, this emergency ordinance is in response to the disaster, caused by the COVID-19 pandemic, promotes public health, safety and welfare and is consistent with the law of the Commonwealth of Virginia, the Constitution of Virginia and the Constitution of the United States of America.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Danville, Virginia that this ordinance allows for variances from state laws and city ordinances in order to protect the health, safety, and welfare of residents and employees from the spread of COVID-19 while still providing for government operations to continue during this state of emergency; and

BE IT FURTHER ORDAINED that:

1. That the COVID-19 pandemic makes it unsafe to assemble in one location a quorum for public bodies including but not limited to the City Council, the School Board, the Planning Commission, Board of Zoning Appeals, Board of Equalization, Employee Retirement System Board of Trustees, Industrial Development Authority of Danville, Virginia, the Danville Community Policy Management Team, and all other local and regional boards, commissions, committees and authorities created by the City Council or to which the City Council appoints all or a portion of its members (collectively "Public Entities" and individually "Public Entity"), or for such Public Entities to conduct meetings in accordance with normal practices and procedures; and
2. That in accordance with Virginia Code § 15.2-1413, and notwithstanding any contrary provision of law, general or special, the following emergency procedures are adopted to ensure the continuity of government during this emergency and disaster:

- a. Any meeting or activities which require the physical presence of members of the Public Entities may be held through real time electronic means (including audio, telephonic, video or other practical electronic medium) without a quorum physically present in one location; and
- b. Prior to holding any such electronic meeting, the Public Entity shall provide public notice of at least 3 days in advance of the electronic meeting identifying how the public may participate or otherwise offer comment; and
- c. Any such electronic meeting of Public Entities shall state on its agenda and at the beginning of such meeting that it is being held pursuant to and in compliance with this Ordinance; identify Public Entity members physically and/or electronically present; identify the persons responsible for receiving public comment; and identify notice of the opportunities for the public to access and participate in such electronic meeting; and
- d. Any such electronic meeting of the Public Entities shall be open to electronic participation by the public and closed to in-person participation by the public; and
- e. For any matters requiring a public hearing and any items for which public comment is permitted, the following rules apply:
 - 1. Normal rules of order apply with respect to requiring the name and home address of the commenter that comments relate to the hearing or comment topic, that appropriate limits on the number of comments per person per item apply, and that comments be of reasonable length.
 - 2. Public Entities may allow public comments to be submitted via phone call, e-mail, or in writing, up until a reasonable time before the start of the meeting so long as those comments are provided to the Public Entities members prior to any decision on an item.
 - 3. If available, members of the public may provide comments through

leaving a voicemail on a dedicated phone number up until a reasonable time before the start of the meeting so long as those comments are then provided to the Public Entity members prior to any decision on an item.

4. The Public Entities may choose to receive additional comments through any means for a period of time after the public hearing or public meeting, so long as it announces and publicizes that opportunity and those comments are provided to the Public Entities members prior to any decision on an item.

5. All public comments shall be made a part of the record of the Public Entities either by being summarized in or included with the meeting minutes.

f. The minutes of all electronic meeting shall conform to the requirements of law, identify how the meeting was conducted, members participating, and specify what actions were taken at the meeting. The Public Entities may approve minutes of an electronic meeting at a subsequent electronic meeting and shall later approve all such minutes at a regular or special meeting after the emergency and disaster has ended; and

g. Any item on an agenda for a regularly scheduled, regular, special, or emergency meeting held hereunder may be continued to a later date or time for the purpose of reviewing and considering comments from the public; and

BE IT FURTHER ORDAINED that this ordinance shall serve as the written policy allowing for and governing participation of any Public Entities members by electronic communication means pursuant to Virginia Code §2.2-3708.2(C)(1). Any member who is unable to attend the meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance to participate in the meeting pursuant to Virginia Code § 2.2-3708.2(A)(1)(a) is hereby approved for participation in the meeting pursuant to Virginia Code §2.2-3708.2(C)(1); and

BE IT FURTHER ORDAINED that notwithstanding any provision of law, regulation or policy to the contrary, any deadlines requiring action by a Public Entity, its officers (including Constitutional Officers) and employees of its organization shall be suspended during this emergency and disaster, however, the Public Entities, officers and employees thereof are encouraged to take such action as is practical and appropriate to meet those deadlines. Failure to meet any such deadlines shall not constitute a default, violation, approval, recommendation or otherwise; and

BE IT FURTHER ORDAINED, that the City Council hereby confirms and ratifies the City Manager's decision to waive any penalty or interest for the payment of lodging and meals taxes due for the month of February so long as said payment is made with the businesses regularly scheduled tax payment for the month of March.


BE IT FURTHER ORDAINED, that non-emergency public hearings and action items of Public Entities may be postponed to a date certain provided that public notice is given so that the public are aware of how and when to present their views; and

BE IT FURTHER ORDAINED, that the provisions of this Emergency Ordinance shall remain in full force and effect, unless amended, rescinded or readopted by the City Council in conformity with the notice provisions set forth in Virginia Code §15.2-1427 but in no event shall such ordinance be effective for more than 6 months. Upon rescission by the City Council or automatic expiration as described herein, this emergency ordinance shall terminate and normal practices and procedures of government shall resume; and

BE IT FURTHER ORDAINED, nothing in this Emergency Ordinance shall prohibit Public Entities from holding in-person public meetings provided that public health and safety measures as well as social distancing are taken into consideration; and

BE IT FINALLY ORDAINED, an emergency is deemed to exist, and this ordinance shall be effective upon its adoption.

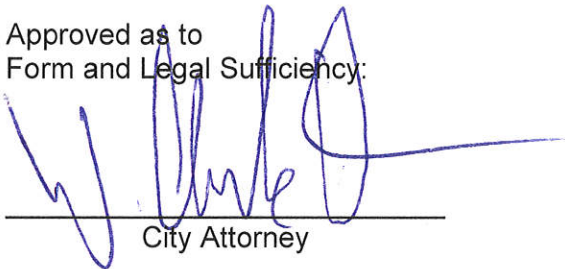
APPROVED:


MAYOR

ATTEST:


CLERK

Approved as to
Form and Legal Sufficiency:


City Attorney